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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON

11 DONNA K. BUCKALEW and
12 BRIAN D. PURKHISER,

13 Plaintiffs,

14 vs.

15 SUTTELL & HAMMER, P.S.,

16 Defendant.

No. CV-10-3002-LRS

DEFENDANT'S ANSWER AND
AFFIRMATIVE DEFENSES TO SECOND
AMENDED CLASS-ACTION
COMPLAINT

17 Defendant, Suttell & Hammer, PS (hereinafter referred to "Suttell") answers the
18 Second Amended Class-Action Complaint as follows:

19 1. Suttell admits that this is a case under the Fair Debt Collection Practices Act.
20 The balance of the allegations in paragraph 1 are legal conclusions to which no answer is
21 required.

22 2. No answer is required to paragraph 2 of the Second Amended Class-Action
23 Complaint as the allegations thereof contain legal conclusions.
24

DEFENDANT'S ANSWER AND
AFFIRMATIVE DEFENSES TO SECOND
AMENDED CLASS-ACTION COMPLAINT

-- 1

Winston & Cashatt
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601 West Riverside
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1 3. No answer is required to paragraph 3 of the Second Amended Class-Action
2 Complaint as the allegations thereof contain legal conclusions.

3 4. No answer is required to paragraph 4 of the Second Amended Class-Action
4 Complaint as the allegations thereof contain legal conclusions.

5 5. Suttell is without sufficient knowledge to admit or deny the allegations in
6 paragraph 5 and, therefore, denies them.

7 6. Suttell is without sufficient knowledge to admit or deny the allegations in
8 paragraph 6 and, therefore, denies them.

9 7. No answer is required to paragraph 7 of the Second Amended Class-Action
10 Complaint as the allegations thereof contain legal conclusions.

11 8. No answer is required to paragraph 8 of the Second Amended Class-Action
12 Complaint as the allegations thereof contain legal conclusions.

13 9. Admitted.

14 10. Admitted.

15 11. No answer is required to paragraph 11 of the Second Amended Class-Action
16 Complaint as the allegations thereof contain legal conclusions.

17 12. Admitted.

18 13. No answer is required to paragraph 13 of the Second Amended Class-Action
19 Complaint as the allegations thereof contain legal conclusions.

1 14. Admitted.

2 15. Admitted. By way of further answer, the attached Affidavit is covered by
3 the October 27, 2009 letter to the plaintiff that states: "The creditor has requested suit on
4 this account and the Affidavit has been provided by our client for suit purposes. We are
5 providing you a copy of this Affidavit for verification purposes. At this time, suit has not
6 been initiated."
7

8 16. Admitted. By way of further answer, the attached Affidavit is covered by
9 the October 27, 2009 letter to the plaintiff that states: "The creditor has requested suit on
10 this account and the Affidavit has been provided by our client for suit purposes. We are
11 providing you a copy of this Affidavit for verification purposes. At this time, suit has not
12 been initiated."
13

14 17. Admitted.

15 18. Admitted. By way of further answer, the attached Affidavit is covered by
16 the June 14, 2010 letter to the plaintiff that states: "The creditor has requested suit on this
17 account and the Affidavit has been provided by our client for suit purposes. We are
18 providing you a copy of this Affidavit for verification purposes. At this time, suit has not
19 been initiated."
20

21 19. Admitted. By way of further answer, the attached Affidavit is covered by
22 the June 14, 2010 letter to the plaintiff that states: "The creditor has requested suit on this
23
24

1 account and the Affidavit has been provided by our client for suit purposes. We are
2 providing you a copy of this Affidavit for verification purposes. At this time, suit has not
3 been initiated."

4
5 20. The language set forth in the Affidavit speaks for itself. To the extent the
6 allegations in paragraph 20 contain legal conclusions, no answer is required. Suttell
7 admits that the Affidavit contains the language that is in the Affidavit.

8 21. Denied.

9
10 22. Denied.

11 23. Denied.

12 24. Denied.

13
14 25. No answer is required to paragraph 25 of the Second Amended Class-Action
15 Complaint as the allegations thereof contain legal conclusions.

16 26. Denied.

17
18 27. No answer is required to paragraph 27 of the Second Amended Class-Action
19 Complaint as the allegations thereof contain legal conclusions.

20 28. Denied.

21 29. Denied.

22 30. Denied.

1 31. Denied. No answer is required to the allegations set forth in paragraph 31
2 that contain legal conclusions.

3 32. Denied.

4 33. Answering the allegations contained in paragraph 33 of the Second
5 Amended Class-Action Complaint, defendant does not possess sufficient information to
6 form a belief as to the truth of the allegations and, therefore, denies them.
7

8 34. Denied.

9 35. Denied.

10 36. Denied.

11 37. Answering the allegations contained in paragraph 37 of the Second
12 Amended Class-Action Complaint, defendant does not possess sufficient information to
13 form a belief as to the truth of the allegations and, therefore, denies them.
14

15 38. Denied.

16 39. Denied.

17 40. No answer is required as this allegation merely states that the plaintiffs have
18 demanded a jury trial.
19

20 41. Denied.

AFFIRMATIVE DEFENSES

For further answer to the Second Amended Class-Action Complaint, and by way of affirmative defenses thereof, Suttell alleges the following affirmative defenses:

1. The parties have entered into an agreement to settle plaintiff Buckalew's claim. Defendant has performed all of its obligations under this agreement. This claim is barred by the doctrine of accord and satisfaction.

2. Plaintiffs' claims, in whole or in part, fail to state claims upon which relief can be legally granted against defendant.

3. Any technical violations of the FDCPA proven by the plaintiffs will not support an award of attorney fees without establishment of actual or additional damages.

4. Any cause of action of the plaintiffs is barred by the running of the applicable statute of limitations.

5. Suttell is not liable for any alleged violations under the FDCPA as it is shielded by the bona fide error defense, 15 USC §1692(k)(c). To the extent a violation of state or federal law took place, which Suttell denies, said violation was not intentional and resulted from a bona fide error that occurred notwithstanding the maintenance of procedures reasonably adopted to avoid such errors.

6. Plaintiffs' claims are barred by the doctrines of estoppel, res judicata, laches, and unclean hands.

1 7. Plaintiffs' claims are barred by 28 USC §1738, which requires this court to
2 give the same legal effect to Washington court decisions that are given in Washington.

3 8. Plaintiffs' claims are barred by common law principles of comity among
4 courts of claims, preclusion and issues preclusion.

5 9. Plaintiffs' claims are barred under the Rooker-Feldman doctrine as an
6 impermissible appeal of a state court action.

7 10. Plaintiffs' claims are barred or limited to the extent plaintiffs have not opted
8 to mitigate their damages, if any.

9 11. Plaintiffs may have waived any and all claims against Suttell.

10 12. Suttell specifically invokes any and all applicable caps or other limits on
11 damages, whether it is to the plaintiffs individually or to any purported class.

12 13. The actual damages or other appropriate relief, if any, of any purported class
13 members, are individual rather than through utilization of class action procedure.

14 14. Suttell is entitled to all defenses, presumptions, and inferences provided by
15 the FDCPA, 15 USC §1692 et. seq.

16 15. Suttell reserves the right to seek amendment of these pleadings to assert
17 additional answers, affirmative defenses, counterclaims, or third-party claims justified by
18 the facts of this case as learned in discovery, and/or abandon those which are not
19 supported by the facts.

1 WHEREFORE, Suttell prays for the following relief:

2 1. That the Second Amended Class-Action Complaint be dismissed and that
3 judgment be entered in Suttell's favor on the allegations stated therein.
4

5 2. That Suttell receives its costs of suit and disbursements incurred herein,
6 including attorney fees and costs, as allowed by law.

7 3. That Suttell be granted leave to amend its pleadings to assert additional
8 answers, affirmative defenses, counterclaims, cross-claims or third-party claims justified
9 by the facts of this case as learned in discovery and/or abandon those which are not
10 supported by the facts.
11

12 4. That no declaratory relief or injunctive relief be made available to the
13 plaintiffs.
14

15 5. That Suttell receive such other and further relief as the court deems just and
16 proper.

17 DATED this 20th day of October, 2010.
18

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CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to attorneys for plaintiffs and that a copy was sent via US Mail, postage prepaid to Noah Radbil at the address shown below:

Aaron Radbil aradbil@attorneysforconsumers.com

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